The Hon'ble Sri Justice Nooty Ramamohana Rao

Writ Petition No.14205 of 1997

Dated 27th November 2006

Between:

P.Venkata Rao.

.. Petitioner

And

1.The Executive Engineer (Housing),
A.P.Housing Board, Nellore, and another.

.. Respondents

The Hon'ble Sri Justice Nooty Ramamohana Rao

Writ Petition No.14205 of 1997

Order:

This Writ Petition has been instituted calling in question the orders passed by the first respondent-Executive Engineer, A.P.Housing Board, Nellore, on 25-04-1997, declining to accept a demand draft submitted by the writ petitioner for a sum of Rs.7500/- and informing that the allotment of House bearing

No.61/LIG.I at Kallurupalli, Nellore, in his favour was cancelled on 31st March, 1997 due to the default committed by him in not taking over physical possession of the said house.

The case of the writ petitioner is that the A.P.Housing Board had undertaken a group-housing scheme and invited applications from eligible candidates on 17th August, 1982. The Low Income Group houses (henceforth referred to 'the LIG house') were valued at Rs.41,000/- and in pursuance of the said scheme, the writ petitioner seems to have deposited certain amounts, which totalled up to Rs.16,964/-. On 15th June, 1989, allotments were made by draw of lots amongst the applicants and in the said draw of lots, the writ petitioner came to be allotted L.I.G.House No.61, which was confirmed by a letter dated 27th June, 1989. The writ petitioner has averred that the houses constructed by the A.P.Housing Board were not complete in all shape and respect, and as a result of which, he could not take possession of the same. The writ petitioner has specifically averred that, however, by a notice dated 25th September, 1996, he was called

upon to take possession of the property and that he had taken possession symbolically on 9th October, 1996. Only when he had come to know that he has been shown to have committed default in payment of the balance instalments of the total value of the house, he had obtained a demand draft for a sum of Rs.7500/- towards the instalment amount and sent the same to the first respondent-Executive Engineer, but the said amount has since been returned through the impugned letter dated 25th April, 1997. Therefore, the writ petitioner is, in effect, aggrieved by the cancellation of the allotment of L.I.G.House No.61 at Kallurupalli, Nellore, by the A.P.Housing Board.

The A.P.Housing Board has asserted that it had cancelled the allotment of House No.61, LIG Colony, in favour of the writ petitioner for the default committed by him which amounts to breach of conditions of the agreement of sale entered into by and between the parties and since this is a matter arising out of contractual relationship, the Court should not interfere in writ proceedings.

The learned Standing Counsel for the respondents

has also relied upon the fact that the A.P.Housing Board, which has been constituted as a corporate body under Section 3 of the A.P.Housing Board Act, 1956 (henceforth referred to as “the Act”) and vested with the right to acquire and hold properties, has not been sued in its corporate name contrary to the obligation to sue it as such. The first respondent-Executive Engineer is only one of its many officers, and he cannot be sued in that capacity without suing the A.P.Housing Board as a body. He would also further go on to assert that House No.61, LIG Colony had since been allotted in favour of Smt.K.Nagajyothi, W/o.K.Kondal Rao and that the said individual had not been impleaded as a party to this Writ Petition and therefore, any order that is likely to be passed in this Writ Petition will adversely affect the said individual and therefore, for non-joinder of proper and necessary parties, the Writ Petition deserves to be dismissed.

Heard the learned Counsel for the parties and perused the record made available by the learned Standing Counsel for the respondents.

It is not in dispute that the A.P.Housing Board has

been constituted for the purposes of undertaking such measures, to undertake such schemes and to carry out such works as are necessary for development of the houses and their eventual allotment for the benefit of eligible persons. A.P.Housing Board being a State, for all practical purposes, is not undertaking a mere commercial activity or indulging in real estate business. It has been constituted for securing the social philosophy of the State of providing appropriate housing infrastructural facilities at an affordable cost for the benefit of its citizens. The cost effectiveness of the projects undertaken by the A.P.Housing Board is essentially revitted around the philosophy of passing on the benefits to the citizens than with a view to enrich the Housing Board itself. There the Housing Board stands out in contrast to any other private entrepreneur. Therefore, every action of the A.P.Housing Board is required not only to be transparent in all respects, but is essentially liable to be free from the vice of arbitrariness or favouritism or discrimination. One of the well-known forms of discrimination is, picking out the beneficiaries without following any fair procedure and transparent measures.

In the instant case, the file produced by the learned Standing Counsel for the A.P.Housing Board had disclosed that on 25th of September, 1996, the writ petitioner had been reminded to take physical possession of the L.I.G House No.61 at Kallurupalli, Nellore, on or before 9th October 1996, failing which, it was stated that the allotment will be cancelled without any further notice. The agreement of sale entered into by the A.P.Housing Board with the writ petitioner on 20th November, 1995 has not provided for any such term or condition that the allottee *i.e.,* the writ petitioner should take physical possession of the allotted house within any specified time limit. On the contrary, certain conditions have been incorporated in clauses 10, 18 and 19 setting out that the allottee is liable to be evicted, if there is any default committed by him in complying with the stipulations of payments from the schedule of payment. However, provision has also been incorporated in clause 18 to secure realization of the installment amount due with penal interest at 1 ½ times the interest fixed by the Housing Board for the said purpose. Thus, the terms of the agreement

entered into with the writ petitioner would only disclose levy of penal interest and possible eviction from the dwelling unit itself at the hands of the Housing Board for violation of the terms and conditions of the agreement. In the instant case, while the writ petitioner asserts that he had taken symbolic possession of the property in question on 9th October, 1996, the said fact has been stoutly denied and disputed by the respondents. Since the Writ Petition is not the proper forum for deciding such disputed questions of fact as to whether or not the writ petitioner had taken symbolic possession of an immovable property on 9th October, 1996, I do not wish to be detained any further on this count.

But however, the fact remains that by the proceedings dated 31st March, 1997, the first respondent-Executive Engineer of A.P.Housing Board, Nellore, has passed an order that the allotment of L.I.G.House No.61 in favour of the writ petitioner stands cancelled. Thus, it is more than clear that the actual cancellation of the allotment of L.I.G.House No.61 in favour of the writ petitioner had taken place on 31st March, 1997 by the first respondent-Executive

Engineer.

However, while I was perusing the file produced by the learned Standing Counsel for the A.P.Housing Board relating to the allotment of L.I.G.House No.61 at Kallurupalli, Nellore, in favour of one Smt K.Nagajyothi, wife of Sri K.Kondala Rao, I noticed certain disturbing facts. The said Smt.K.Nagajyothi seems to have submitted a representation dated 17th January, 1997, which was received by the first respondent-Executive Engineer, A.P.Housing Board, on 24th January, 1997, pointing out that she has been originally allotted house bearing No.822 in the LIG colony whereas the very same house bearing No.822 has also been simultaneously allotted to some other individual. Consequently, she had been nurturing a grievance about the same from 7th August, 1996 onwards. Therefore, Smt.Nagajyothi had formally called upon the first respondent-Executive Engineer to look into the matter and remedy her grievance of the mismanagement of the allotment of L.I.G House No.822. It is, thus, clear that there was a piquant situation brought about by the A.P.Housing Board by

allotting House No.822 in favour of Smt.Nagajyothi and also to some other individual and with a view to get out of this mess, that has been created by themselves, certain blanks in the agreement said to have been entered into with Smt.K.Nagajyothi, on 20th June, 1996, have been sought to be filled in later on. While the adhesive stamp and the cancellation across its face on the agreement of sale had been accomplished on 20th June, 1996 by the Joint Sub-Registrar, very strangely the date of it's execution has been indicated as 18th February, 1997 and one Mr.Ahmed Mohiuddin, Executive Engineer (Housing) has affixed his signature for and on behalf of the A.P.Housing Board on 18th February, 1997 on this document. This document has referred to the House bearing No.61 of L.I.G.Colony at Kallurupalli, Nellore in the schedule annexed to the said agreement of sale. It is, thus, more than clear that coming under pressure from the bungling brought about by allotting House No.822 both in favour of Smt.Nagajyothi and also some other individual,

a convenient escape route is devised by executing the agreement of sale in favour of Smt.Nagajyothi on

18th February, 1997 itself showing and treating her to

have been allotted L.I.G.House No.61. The fact remains that the first respondent-Executive Engineer had not cancelled the allotment in favour of the writ petitioner by 18th February, 1997 inasmuch as he passed the actual order of cancellation through his proceedings bearing letter No.61/EM-2/97/84 M, dated 31st March, 1997. Without cancelling the allotment of L.I.G.House No.61 made originally in favour of the writ petitioner, the same house has been allotted in favour of Smt.K.Nagajyothi. Thus, the true reason for cancellation of the house allotted originally in favour of the writ petitioner is not so much attributable to the default committed by the writ petitioner in payment schedule or for his failure to take possession of the L.I.G.House No.61, but it is essentially to find a convenient escape route for the mess created in double allotment of L.I.G.House No.822 involving Smt.K.Nagajyothi. Otherwise, there is no good reason much less a valid one for picking up the name of Smt.K.Nagajyothi for allotment of LIG House No.61. Should the A.P.Housing Board find it necessary to make such an allotment, after all, she is not the only person in the entire Nellore Town requiring allotment of a house.

Thus, the entire action of the A.P.Housing Board in allotting the L.I.G. House bearing No.61 in favour of Smt.Nagajyothi on 18-02-1997 and the cancellation of the same house in favour of the writ petitioner subsequent thereto on 31st March, 1997, are all smacking of arbitrary actions on the part of the Housing Board officials. Therefore, the reason invented for cancellation of L.I.G.House No.61 allotted in favour of the writ petitioner, was not the real or the true one, which has been made the basis for such an action, but it is purely an invented exercise. Therefore, the cancellation of the allotment of a house in favour of the writ petitioner had got to be necessarily declared as not in accordance with law.

But, however, the matter does not stop there. In spite of the A.P.Housing Board bringing on record the fact that LIG House No.61 in Kallurupalli Village, Nellore, stood allotted in favour of Smt.K.Nagajyothi, wife of Kondal Rao, the writ petitioner has not moved his little finger to bring her on record of the above Writ Petition. If any order is now passed for restoration of the allotment of the L.I.G.House No.61 in favour of the

writ petitioner, it will have a direct impact and effect on the interests of Smt.K.Nagajyothi. No such order can be passed behind her back, after all, she herself is a victim of a wrong committed by the A.P.Housing Board on both the occasions. Therefore, without her being impleaded as a party-respondent, the cancellation of the allotment of L.I.G.House No.61 in her favour should not be resorted to.

Though the learned Standing Counsel for the A.P.Housing Board has raised the contention that the A.P.Housing Board has not been impleaded and is not sued in that capacity as is required in terms of Section 3 of the Act, but, nonetheless, the impugned order having been passed by the Executive Engineer (Housing), Nellore, he has been impleaded as first respondent to the Writ Petition. The Writ Petition is, no doubt, improperly constituted. The A.P.Housing board as a body corporate ought to have been sued by the writ petitioner. Since the Executive Engineer, who is fairly a senior level functionary of the A.P. Housing Board, has been impleaded as the first respondent, he had brought out all necessary facts on record. Though A.P.Housing Board is a proper and necessary party, its non-

impleadment, in these circumstances, cannot be construed as fatal for maintaining the above Writ Petition, as effectively no prejudice is caused to it.

Similarly, the contention canvassed by the learned Counsel for the respondents that in matters of allotment of houses, formal agreements are entered into by the Housing Board with the respective parties and, therefore, they are all matters relating to contractual obligations and that the Writ Petition is not the proper remedy, I am afraid such a contention is too far-fetched. Providing housing at an affordable rate to the teaming multitudes of this country is as much a State's priority as any other important social security measure is. Providing necessary housing infrastructure perhaps occupies a high priority for a State after providing for food and clothing to a common man. Raising the standards of living of it's people is an obligation thrust upon the State by the Constitution *via* Article 47. For the purpose of accomplishing this objective, the State conveniently conceived of a specialized body to be created and that is how A.P.Housing Board has been brought about. Its very

creation, vesting it with the State's funds, making available the benefits of State's infrastructure and providing it the most important input namely vast extents of vacant land including, in cases of necessity resort also being made to compulsory acquisition of land, are all features, which make these transactions completely stand out from other contractual obligations between the State and its other contractors. The allottee of a house and the Housing Board, who are required to enter into a contract, are not merely bound by the terms of the contract alone, but are also bound by the provisions of the statute. A.P.Housing Board is not merely conducting its business strictly in accordance with and in strict compliance of the terms of the contracts entered into by it with any profit motto. It is only incidental. A.P.Housing Board is also bound by the State's policies including reserving the Houses for SC, ST, BC categories and the provisions of the statute. Therefore, there is a higher degree of relationship than mere contractual, regulating the matters of this nature. A statute has been put in place for regulating this entire exercise. It is, therefore, a misnomer to consider that the relationship that is arising between the beneficiary

and the A.P.Housing Board as simple and pure contractual. I, therefore, reject the contention canvassed on behalf of the respondents that the Writ Petition is not the proper remedy.

Accordingly, the Writ Petition is allowed and the order passed by the first respondent-Executive Engineer, vide Lr.No.61/EM2/97/84-M, dated 31-03-1997, cancelling the allotment of L.I.G.House No.61 at Kallurupalli Village, Nellore, in favour of the writ petitioner, is hereby set aside. But, however, I do not wish to upset or set aside the allotment of L.I.G.House No.61 resorted to by the A.P.Housing Board in favour of Smt.K.Nagajyothi for the reasons already set forth above. Without disturbing her allotment of L.I.G.House No.61, I direct the A.P.Housing Board to find out appropriate measures, by which, the writ petitioner can be allotted yet another LIG House at Kallurupalli, Nellore. The decision, in this regard, is liable to be taken within the next six months and only in the event that the A.P.Housing Board comes to a conclusion that no LIG house is available to be allotted in favour of the writ petitioner by receiving the balance allotment money, then the writ petitioner is liable to be appropriately

compensated for the illegal cancellation of his allotment. He is liable to be paid twice the amount, which has already been paid by him. The accountability and responsibility for the same shall be fixed and the Housing Board must pay the amount at the first instance and may recover the same after accountability and responsibility has been fixed. There shall be no order as to costs.

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27-11-2006

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